FILED
Superior Court of California
County of Los Angeles
MAR 23 2018
Sherri R. Carter, Executive Officer/Clerk
By S. Fletcher Deputy
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Superior Court of California

County of Los Angeles

Department 50

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. VENICE SUITES, LLC, et al. Defendants.	Case No.: BC 624350 Hearing Date: March 23, 2018 Hearing Time: 8:30 a.m. **[~~TENTATIVE~~] ORDER RE:** PLAINTIFF'S REVISED MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION; and DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION

Background

Plaintiff the People of the State of California ("Plaintiff") initiated the instant action on June 17, 2016 by filing a Complaint for Injunctive and Other Equitable Relief and Civil Penalties for: 1) Los Angeles Municipal Code Section 11.00; 2) Public Nuisance in Violation of Civil Code Section 3479 et seq.; 3) Unfair Competition Law (Business and Professions Code Section 17200 et seq.); and 4) False Advertising Practices (Business and Professions Code Section 17500 et seq.) (the "Complaint") against Defendants Venice Suites, LLC ("Venice Suites") and Carl Lambert ("Lambert") (jointly, "Defendants"). The aim of the Complaint is to "bring the apartment building located at 417 Ocean Front Walk ("417 OFW") into compliance with all applicable regulations and to enjoin Defendants from maintaining 417 OFW as an illegal hotel or

illegal transient occupancy residential structure." (Compl., ¶ 1.) Plaintiff alleges that Defendants engage in short-term rental schemes in violation of applicable laws by advertising the apartment units to the public and operating 417 OFW for such use. (Compl., ¶¶ 3-5.)

The parties have filed cross-motions for summary judgment, or in the alternative, summary adjudication.

Evidence

The Court notes that the parties' evidentiary objections have been resolved via the Stipulations and Orders as to Certain Evidentiary Objections re: Plaintiff's Revised Motion for Summary Judgment, or in the Alternative, Summary Adjudication, and Defendants' Cross-Motion for Summary Judgment, or in the Alternative, Summary Adjudication filed March 20, 2018 and March 21, 2018.

Legal Standard

"[A] motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c (c).) When a plaintiff seeks summary judgment, he/she must produce admissible evidence on each element of each cause of action on which judgment is sought. (Code Civ. Proc., § 437c(p)(1).) A defendant moving for summary judgment must show either: "that one or more elements of the cause of action … cannot be established"; or "that there is a complete defense to that cause of action." (Code Civ. Proc., § 437c(p)(2).) The opposing party on a motion for summary judgment is under no evidentiary burden to produce rebuttal evidence until the moving party meets his or her initial movant's burden. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840.) Once the initial movant's burden is met, then the burden shifts to the opposing party to show, with admissible evidence, that there is a triable issue requiring the weighing procedures of trial. (Code Civ. Proc., § 437c(p).) The opposing party may not simply rely on his/her allegations to show a triable issue, but must produce substantial responsive evidence sufficient to establish a triable issue of material fact on the merits of the defendant's showing. For this purpose, responsive evidence that gives rise to no

more than mere speculation cannot be regarded as substantial." (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151 (internal citations omitted).)

Discussion

A. Standing

Defendants contend that Plaintiff lacks standing to bring this lawsuit on two grounds: 1) the City Attorney lacks authority to maintain an action under the City of Los Angeles' (the "City") municipal code on behalf of the People of the State of California, and 2) the people of the State of California do not have a beneficial interest in this controversy above and beyond the interest held in common with the public at large. As to the first argument, the Court finds that it is not well-taken. Government Code section 36900, subdivision (a), a state law, provides that "[t]he violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action." (Gov. Code, § 36900(a).) As to the second argument, the Court finds that it is similarly not well-taken. "[S]tanding is governed by statute." (*Consumer Cause, Inc. v. Johnson & Johnson* (2005) 132 Cal.App.4th 1175, 1182-1183.) Here, Government Code section 36900, subdivision (a) explicitly confers standing to the people of the State of California. (Gov. Code § 36900(a).) Therefore, the Court finds that Plaintiff has standing to maintain this lawsuit.

B. Zoning Code, RSO, and TOT terms

This case turns on statutory interpretation of a number of different terms, the most relevant of which are as follows:

Zoning Code:

1. Apartment house: a "residential building designed or used for three or more dwelling units or a combination of three or more dwelling units and not more than five guest rooms or suites of rooms" (LAMC, § 12.03, RJN[1], Ex. 5, 47.)

[1] "RJN" means Plaintiff's Request for Judicial Notice. "JF" means Joint Statement of Facts; "SF" means Defendants' Separate Statement of Facts; and "PF" means Plaintiff's Separate Statement of Facts.

2. Dwelling unit: "[a] group of two or more rooms, one of which is a kitchen, designed for occupancy by one family for living and sleeping purposes" (LAMC, § 12.03, RJN Ex. 5, 47.)

3. Guest room: "[a]ny habitable room except a kitchen, designed or used for occupancy by one or more persons and not in a dwelling unit" (LAMC, § 12.03, RJN Ex. 5, 47.)

4. Suite: "[a] group of habitable rooms designed as a unit, and occupied by only one family, but not including a kitchen or other facilities for the preparation of food, with entrances and exits which are common to all rooms comprising the suite" (LAMC, § 12.03, RJN, Ex. 5, 47.)

5. Hotel: "[a] residential building designated or used for or containing six or more guest rooms, or suites of rooms, which may also contain not more than one dwelling unit...." (LAMC, § 12.03, RJN, Ex. 5, 53.)

6. Transient Occupancy Residential Structure[2]: "[a] residential building designed or used for one or more dwelling units or a combination of three or more dwelling units and not more than five guest rooms or suites of rooms wherein occupancy, by any person by reason of concession, permit, right of access, license, or other agreement is for a period of 30 consecutive calendars days or less, counting portions of calendar days as full days." (LAMC, § 12.03, RJN, Ex. 5, 66.)

7. Tenant: "[a] person who rents, leases or sub-leases, through either a written or oral agreement, residential real property from another" (LAMC, § 12.03, RJN, Ex. 5, 65.)

8. "R3" Multiple Dwelling Zone: "[n]o building, structure or land shall be used...except for the following uses... (4) Apartment houses." (LAMC, § 12.10(A)(4), RJN, Ex. 7, 75.)

Rent Stabilization Ordinance ("RSO"):

9. Rental unit: "[a]ll dwelling units...guest rooms, and suites, as defined in [LAMC] Section 12.03" but does not include "[h]ousing accommodations in hotels, motels,

[2] It is undisputed that the TORS definition was added to the Code in 1992. [JF 57] (LAMC, § 12.03, RJN, Ex. 5, 66.)

inns, tourist homes and boarding and rooming houses, provided that at such time as an accommodation has been occupied as the primary residence of one or more of the same tenants for any period more than 30 days such accommodation shall become a rental unit subject to [the RSO]." (LAMC, § 151.02, RJN, Ex. 19, 134, 135.)

10. Tenant: "[a] tenant, subtenant, lessee, sublessee or any other person entitled to use or occupancy of a rental unit" (LAMC, § 151.02, Ex. 19, 138.)

Transient Occupancy Tax Ordinance ("TOT"):

11. Hotel: "any structure…which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel…apartment house…or other similar structure or portion thereof…." (LAMC, § 21.7.2(b), RJN, Ex. 12, 101.)

12. Transient: "[a]ny individual who personally exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement, for a period of 30 consecutive calendar days or less…[;] [a]ny such individual so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired…." (LAMC, § 21.7.2(d)(2), RJN, Ex. 12, 101.)

C. Interpreting the Zoning Code, RSO, and TOT

There is no dispute that 417 OFW is an apartment house[3], that it is permitted to be an apartment house, and that its Certificate of Occupancy ("COO") authorizes its use as an apartment house. [JF 5, 6, 7] It is further undisputed that Defendants have allowed members of the public to reserve rooms at 417 OFW for short-term rentals since 2012. [JF 34]

The dispute is whether, as an apartment house, 417 OFW may also rent its units on a short-term basis (*i.e.*, rentals for a period of 30 days or less). Plaintiff's position is that, reading together various parts of the Los Angeles Municipal Code ("Code"), the answer is clearly no: rental units in an apartment house may not be rented out on a short-term basis, and the existence

[3] It is also worth noting that 417 OFW is not a hotel under the Code because it does not contain any guest rooms and is only composed of dwelling units. [PF 3]

of short-term rentals within an apartment house *necessarily* changes its use from an apartment house to something else, either a hotel or a TORS. Defendants, on the other hand, assert that the Code is silent as to whether rental units in an apartment house may be rented on a short-term basis. Such silence indicates that short-term rentals are not prohibited. Defendants' position is that because the Code does not regulate the length of occupancies for apartment houses, the existence of short-term rentals at 417 OFW does *not* change its use.

As urged by Plaintiff, the Court begins with consideration of the plain language of the Code. "[W]e begin with the fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, the court turns first to the words themselves for the answer. We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (*Carter v. Cohen* (2010) 188 Cal.App.4th 1038, 1046 [internal citations omitted].)

It is undisputed that the Zoning Code does not mention that the use of an apartment house is restricted to stays of 30 days or less. [JF 46] It is also undisputed that the definition of apartment house in the Zoning Code does not mention that occupancies are restricted to 30 days or less. [JF 47] These facts lend support to the notion that the Zoning Code does not regulate the length of occupancy within apartment houses.

In order to reach the conclusion that apartment houses cannot include short-term rentals, Plaintiff ties together the following defined terms from the Code thusly: i) an apartment house (definition #1, above) consists of rental units (definition #9), ii) rental units in an apartment house may only be occupied by tenants (definition #10 but not definition #7), iii) transients (definition #12) are different from tenants, and accordingly, iv) transients may not occupy rental units in apartment houses.

Premise (i) is uncontroversial; the RSO's definition of a rental unit explicitly references definitions from the Zoning Code. The links in premise (ii) are more tenuous. In order to reach

the conclusion that rental units may only be occupied by tenants, Plaintiff overlooks the definition of tenant in the Zoning Code and focuses exclusively on the definition of tenant provided in the RSO. Although Plaintiff cites to cases in support of the proposition that the Zoning Code and RSO must be interpreted together, Plaintiff cites to *no* cases in support of the proposition that definitions within the Zoning Code may be discounted in favor of a definition of the same term in the RSO. Indeed, as noted by Defendants, "[t]his court has no power to rewrite [a] statute so as to make it conform to a presumed intention which is not expressed." (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 595.) The purpose of the Zoning Code is to "consolidate and coordinate all existing zoning regulations and provisions into one comprehensive zoning plan in order to designate, regulate and restrict the location and use of buildings, structures and land, for…residence, commerce, trade, industry or other purposes." (LAMC, § 12.02.)[4] The purpose of the RSO is to "regulate rents so as to safeguard tenants from excessive rent increases, while at the same time providing landlords with just and reasonable returns from their rental units." (LAMC § 151.01, RJN, Ex. 19, 131.) The intentions of the Zoning Code and the RSO are explicit, and therefore, the Court declines to read into the RSO an intention to regulate the allowable uses of buildings. Additionally, when the definition of TORS was added to the Zoning Code, there was no concurrent addition of the term "transient." Instead, a TORS was defined without reference to any other terms (*e.g.*, occupancy in a TORS is limited to "a period of 30 consecutive calendar days or less"). (LAMC, § 12.03, RJN, Ex. 5, 66.) This militates against construing the Zoning Code and RSO together in the context of this lawsuit. For these reasons, the Court finds that the cases cited by Plaintiff are inapposite. *ABCO, LLC v. Eversley* (2013) 213 Cal.App.4th 1092, 1100 turned on whether the term "dwelling" as defined in section 12.03 could be made applicable to section 151.02, which also used the word "dwelling." The Court of Appeal held that it could precisely because section 151.02 states that

[4] Though not requested by either party, the Court takes judicial notice of LAMC section 12.02 pursuant to Evidence Code section 452(b). (*See Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 752 ["…the court may take judicial notice on its own volition"].) Incidentally, the Court takes judicial notice of all other sections of the LAMC cited herein that are not the subject of a request for judicial notice from either party.

"[w]ords and phrases not defined herein shall be construed as defined in sections 12.03 and 152.02 of this Code, if defined therein." (*Ibid.*) Here, section 151.02's reference to definitions contained in section 12.03 does not help Plaintiff because the term "tenant" is already defined in section 12.03. Similarly, in *Carter v. Cohen*, *supra*, 188 Cal.App.4th at page 1047, the Court of Appeal held that a guesthouse was a "rental unit" subject to the RSO because the definition of "rental unit" under the RSO includes a "dwelling unit, as specified in section 12.03." Again, the authorization to look beyond the definition contained within the RSO was explicit. Whereas here, the term "tenant" is already defined in the Zoning Code, which regulates use of buildings, and so there is no basis for looking to the RSO to define what a "tenant" is in terms of such use.

If instead the definition of tenant found in the Zoning Code was used (definition #7, above), premise (ii) would have no support. There would be no statutory basis for restricting the use of an apartment house based on length of occupancy. Accordingly, the Court finds that there *is* no statutory basis for restricting the use of an apartment house based on length of occupancy. Moreover, premise (ii) is not the only weak link in Plaintiff's proffered scheme. In support of premise (iii), Plaintiff pulls in a definition from the TOT. The definition of rental unit in the RSO excludes a room in a hotel where the occupancy has not reached 31 days. On the thirty-first day of such occupancy, the room in the hotel becomes a rental unit, and the person occupying the rental unit becomes a tenant. In order to define what the person was before he or she became a tenant, Plaintiff looks to the TOT. The TOT says that during an occupancy that lasts for up to 30 days, the individual is a transient. However, the TOT Ordinance was enacted in 1964 to levy taxes on transient occupancies. (LAMC § 21.7.3, RJN, Ex. 12, 102.) [JF 17] The Court finds no stated legislative intent to regulate the length of occupancies in the TOT, and Plaintiff proffers no evidence supporting such an intent.

In light of the foregoing, the Court also affords deference to the interpretation of the City of its prohibitions against short-term rentals, or lack thereof. Defendants submit evidence of various City officials testifying that neither the Zoning Code nor the RSO prohibits short-term rentals. [JF 14-16, 48-55] "[A] [c]ity's interpretation of its own City Code is entitled to deference

in [a court's] independent review of the meaning or application of the law." (*Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1091 [internal quotations omitted].)

Therefore, the Court finds that 417 OFW is an apartment house, and that renting units at 417 OFW on a short-term basis is not prohibited by the Code, nor does it change the use of 417 OFW such that it is instead a hotel or a TORS.[5]

D. The COO and Building Permits

Plaintiff contends that 417 OFW's COO and building permit (#WL59314) authorizes only apartment house use. [JF 6; Plaintiff's Ex. 6, 87, 88] Plaintiff characterizes the issue as whether 417 OFW has the required building permit and COO "to operate as a hotel or TORS." (Plaintiff's Motion, p. 5: 12-13.) However, based on the Court's finding that the Code does not prohibit short-term rentals in apartment houses, even if it is true that the COO and building permit authorizes only apartment house use, that does not bear on whether the COO and building permit prohibit short-term rentals. Similarly, the fact that 417 OFW is located in the R3 Multiple Dwelling Zone is immaterial because that fact has no bearing on whether an apartment house may legally rent units on a short-term basis. [JF 4]

E. First Cause of Action - Violation of LAMC 11.00

LAMC section 11.00(l) declares every violation of the LAMC to be a nuisance. (LAMC, § 11.00(l).) Plaintiffs argue that Defendants violated the following sections of the LAMC by "operating 417 OFW as a hotel": sections 12.10(A), 12.21(A)(1), 12.26(E), 91.109, 91.8105, and 91.8204. Plaintiffs also argue that Defendants violated section 91.103.3 by using 417 OFW for transient occupancy in violation of HCIDLA's January 26, 2015 Notice to Comply. [JF 25]

Because the Court finds that there is no prohibition in the Code against short-term rentals in apartment houses, the Court finds that Plaintiff cannot show that Defendants violated LAMC sections 12.10(A) [establishing the allowable uses in the R3 zone], 12.21(A)(1) [prohibiting use

[5] The Court notes that the upshot of this finding is that *Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250 is inapposite. Defendants do not rely on an equitable estoppel argument, and neither did the Court in reaching its conclusion. Likewise, the Court finds that the exhaustion doctrine and the primary jurisdiction doctrine are inapplicable. The issue raised in this lawsuit is not the same issue raised to the administrative agency; the Court is not being asked to grant a change of use, but to determine whether the Code prohibits the subject use.

other than is permitted in the located zone], 12.26(E) [requiring a certificate of occupancy before use], 91.109 [requiring a certificate of occupancy before use], 91.8105 [requiring any unauthorized use or occupancy to be discontinued or be made to conform to the Code], and 91.8204 [prohibiting changes to character of occupancies or use that would place the building in a different division/group of occupancies].

Section 91.103.3 requires compliance with a "valid order issued pursuant to any provision or requirement of this Code." (LAMC, § 91.103.3.) The January 26, 2015 Notice to Comply indicates that Defendants violated sections 12.26E, 91.8105, 91.8203, and 91.8204 of the Code and specifically mentions short-term rentals. [JF 25; Plaintiff's Ex. 9] Section 91.8203 requires that every change of occupancy to one classified in a different group or a different division of the same group requires a new certificate of occupancy. (LAMC, § 91.8203.) Defendants contend that they have not violated section 91.103.3 because the January 26, 2015 Notice to Comply was not valid, as it alleged violations of the Code that Defendants did not, in actuality, violate. Based on the Court's finding that there is no prohibition in the Code against short-term rentals in apartment houses, the Court finds that Plaintiff cannot show that Defendants violated section 91.103.3 of the Code.

For the same reasons, the Court finds that Plaintiff cannot show that Defendants violated the Ellis Act. The basis for this claim is that Defendants withdrew rental units from the market by converting them into "illegal hotel rooms." (Plaintiff's Motion, p. 19: 1-2; Compl., ¶ 85[6].) The Court finds that Plaintiffs have failed to demonstrate that the existence of short-term rentals is illegal or that it changes an apartment house's use to a hotel.

F. Second Cause of Action – Violation of Code of Civil Procedure section 731 and Civil Code sections 3479 and 3480

Plaintiff's second cause of action alleges that Defendants' use of 417 OFW creates an ongoing nuisance in violation of section 11.00(l) of the Code (discussed above), and that

[6] Defendants assert that the Ellis Act claims were not pled in the Complaint. In rebuttal, Plaintiffs point to paragraphs 58-70 of the Complaint. In any event, the Court finds that the Ellis Act violation is pled in the Complaint at paragraphs 58-70 and at paragraph 85.

Defendants' purported violations of the Code also violate public nuisance statutes: Code of Civil Procedure section 731, and Civil Code sections 3479 and 3480. For the same reasons as articulated above, because Plaintiff cannot show that Defendants have violated any other provision of the Code, Plaintiff cannot show that Defendants have created a nuisance in violation of Code of Civil Procedure section 731 and Civil Code sections 3479 and 3480.

G. Fourth Cause of Action – Violation of False Advertising Law

Plaintiff alleges that Defendants have engaged in false advertising by "holding themselves out as legitimate hotel or transient occupancy residential structure operators, to induce the public to believe that 417 OFW is a hotel or transient occupancy residential structure, and to rent rooms at 417 OFW, by making…advertisements over the Internet with statements describing 417 OFW as a purported hotel or a transient occupancy residential structure…" (Compl., ¶ 102.) Business and Professions Code section 17500 makes it unlawful to make an advertisement which is "untrue or misleading, and which is known, or which by the exercise of reasonable case should be known, to be untrue or misleading." (Bus. & Prof. Code, § 17500.)

Defendants concede that they advertise 417 OFW as a hotel. [JF 30-32; Defendants' Cross-Motion, p. 33: 22-24.] However, as Plaintiff points out, 417 OFW is in a zone that prohibits hotel use. [JF 4] Even accepting as true Defendants' contention that 417 OFW's COO allows for hotel use, a conflict still exists. Defendants do not argue this point specifically with regard to the false advertising cause of action, but the Court notes that Defendants have argued elsewhere in their Cross-Motion that they have vested rights to use 417 OFW as a hotel. (Defendants' Cross-Motion, p. 26: 13-22.) (*See Halaco Engineering Co. v. South Central Coast Regional Com.* (1986) 42 Cal.3d 52, 73 ["Once a landowner has secured a vested right the government may not, by virtue of a change in the zoning laws, prohibit construction authorized by the permit upon which he relied."].) In support, Defendants point to evidence that two building permits characterize 417 OFW as a "hotel." [Plaintiff's Ex. 5, 78, 85] Defendants also point to evidence that the applicable Los Angeles County Assessor Building Record refers to 417 OFW as a hotel. [JF 9] There is evidence that 417 OFW was zoned commercial until the 1980s.

[SF 47] Plaintiff disputes the weight and import of this evidence. Nevertheless, the Court finds that there is a triable issue of fact as to whether Defendants' advertising of 417 OFW as a "hotel" is untrue or misleading.

H. Third Cause of Action – Violation of Unfair Competition Law

Plaintiff alleges that Defendants violate the Unfair Competition Law because they violate the predicate offenses alleged in the First, Second, and Fourth Causes of Action. Because the Court finds that a triable issue of fact exists as to the Fourth Cause of Action for violation of the False Advertising Law, a triable issue of fact also exists as to the Third Cause of Action for violation of the Unfair Competition Law.

Conclusion

For the foregoing reasons, Defendants' motion for summary adjudication as to the first and second causes of action are granted, and Plaintiff's motion for summary adjudication as to the first and second causes of action are denied. Both parties' motions for summary adjudication as to the third and fourth causes of action are denied.

Defendants are ordered to provide notice of this ruling.

DATED: March 23, 2018

Teresa A. Beaudet

Hon. Teresa A. Beaudet
Judge, Los Angeles Superior Court